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VIA COURIER

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FILED/ACCEPTED
JUL - 1 2008
Federal Communications Commission
Office of the Secretary

July 1, 2008

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Room TW-325
445 12th Street, S.W.
Washington D.C. 20554

Re: *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Phoenix, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas, WC Dkt. No. 07-97*

Dear Ms. Dortch:

On behalf of Integra Telecom, Inc., please find enclosed two copies of a redacted version of an *ex parte* letter for filing in the above-captioned docket. Pursuant to the Second Protective Order in this proceeding, one copy of the highly confidential version is being filed with the Secretary's Office under separate cover, one copy of the highly confidential version will be provided electronically to Denise Coca, Jeremy Miller, and Tim Stelzig, and per his request, one copy of the highly confidential version will also be provided electronically to Gary Remondino.

Please do not hesitate to contact me if you have any questions with respect to this submission.

Respectfully submitted,

Nirali Patel/TJ

Thomas Jones
Nirali Patel

Attorneys for Integra Telecom, Inc.

Enclosures

07-2

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Re: *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas, WC Docket No. 07-97*

Dear Ms. Dortch:

Integra Telecom, Inc. ("Integra"), through its undersigned counsel, hereby submits this *ex parte* in the above-referenced proceeding to urge the Commission to conduct a separate analysis of competition in the market for business services when considering Qwest's requests for forbearance from unbundling needed to serve business customers in the Denver, Minneapolis, Phoenix, and Seattle MSAs. To this end, Integra supplements the record here with: (1) the number and percentage of Integra on-net buildings in the two MSAs at issue in which it has constructed its own facilities, Phoenix and Seattle; and (2) the number of Integra on-net connections in the two states at issue in which it has constructed its own facilities, Arizona and Washington.

Highly Confidential Table 1 below shows the number and percentage of Integra on-net buildings in the Phoenix and Seattle MSAs as of March 25, 2008:

[BEGIN HIGHLY CONFIDENTIAL]

Table 1: Number and Percentage of Integra On-Net Buildings in the Phoenix and Seattle MSAs as of March 25, 2008			

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[END HIGHLY CONFIDENTIAL]

Highly Confidential Table 2 below shows the following: (1) the number of broadband connections to end users (in circuit counts) provided over Integra's own local loop facilities in Arizona and Washington; and (2) the number of voice telephone lines to end users (in voice grade equivalents) provided over Integra's own local loop facilities in each of these states. Unfortunately, Integra does not have the ability to disaggregate this data, which was provided to the Commission in its Form 477 for the year ending December 31, 2007, by MSA. Therefore, Integra submits this data by state. Nevertheless, Integra believes that the actual access line counts in the Phoenix and Seattle MSAs are not very different from the access line counts in Table 2 because the vast majority of Integra's lines are within each MSA. If anything, Table 2 *overstates* Integra's access lines because it includes lines both inside and outside of the Phoenix and Seattle MSAs.

[BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

The purpose of Integra's submission of this data is to assist the Commission in analyzing whether it should grant forbearance from unbundling needed to serve *business customers* in the four MSAs at issue. In order to grant such forbearance, the FCC must find that the market share and network coverage tests established in previous forbearance orders are met *in the business market*. This approach is consistent with the FCC's own analysis in the *6-MSA Order*¹ and the *Omaha Order*.²

First, in the *6-MSA Order*, the Commission recognized that forbearance from loop and transport unbundled network elements ("UNEs") needed to serve business customers should not

¹ *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas*, Memorandum Opinion and Order, 22 FCC Rcd. 21293 (rel. Dec. 5, 2007) ("*6-MSA Order*").

² *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd. 19415 (rel. Dec. 2, 2005) ("*Omaha Order*").

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be granted unless facilities-based competitors have achieved sufficient market share³ in the retail market for business services. In particular, the FCC found that, despite fairly high residential market shares of the incumbent cable companies in the relevant MSAs, “*the record lacks sufficient information for us to determine the cable operators’ market shares for enterprise services*, [and] we find that other evidence in the record demonstrates the comparatively limited role of the cable operators in serving enterprise customers in these MSAs today.”⁴ In other words, the FCC understood that cable companies could make substantial gains in the residential market and still not pose a competitive threat in the business market. The FCC should follow its analysis to its logical conclusion and perform a separate market share calculation for the business market.

In the *6-MSA Order*, the FCC also implicitly recognized that it should not grant forbearance from loop and transport UNEs needed to serve business customers unless facilities-based competitors’ network coverage in the business market exceeds 75 percent in a particular wire center. Specifically, the Commission held:

*Nor does the record reveal other competitors in these MSAs that have deployed their own extensive last-mile facilities for use in serving the enterprise market. Indeed, there is significant record evidence that much of the competition from competitive LECs for enterprise services in these MSAs instead depends on Verizon’s own facilities, including UNEs. While Verizon and other parties submitted certain evidence from a commercial data provider regarding competitive LEC lit buildings, the facilities “coverage” suggested by those data do not approach the 75 percent threshold relied upon by the Commission in the past.*⁵

Thus, in the instant proceeding, Qwest must demonstrate that facilities-based competitors’ network coverage *in the business market* exceeds 75 percent.

Second, under the FCC’s own analysis in the *Omaha Order*, before the FCC can find that there is sufficient competition in the wholesale market, significant levels of retail competition must exist. Specifically, the FCC predicted that, where there are “very high levels of retail competition that do not rely on Qwest’s facilities – and for which Qwest receives little to no revenue,” Qwest has “the incentive to make attractive wholesale offerings available so that it will derive revenue more directly from retail customers who choose a retail provider other than

³ The Commission has made public its preference for 50 percent as the threshold for “sufficient” market share. See *6-MSA Order* ¶ 30 & n.99.

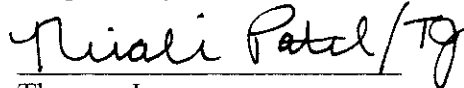
⁴ *6-MSA Order* ¶ 37.

⁵ *Id.* (emphasis added); see also *id.*, n.118 (finding no basis in the record to depart from the approach that Verizon must demonstrate that competitive LEC lit buildings in the relevant MSAs meet the Commission’s 75-percent coverage threshold).

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Qwest.”⁶ The FCC found that such incentives would exist as a result of “significant competition from Cox” in the “residential voice market” in the Omaha MSA.⁷ It is not at all clear whether the presence of a single facilities-based competitor with significant market share in the voice market would actually provide an ILEC with the incentive to offer service to wholesale third-party competitors in the voice market. But in all events, *the Commission must apply its wholesale analytical framework to the business market.* That is, if competitors using their own loops must achieve very high levels of network coverage and retail market share that do not rely on Qwest’s facilities in order to give Qwest an incentive to offer loops and transport to competitors serving residential customers on reasonable terms and conditions, then this must also be true for the loops and transport needed to serve business customers. Accordingly, proof that competitors relying on their own loops have achieved significant levels of network coverage and retail market share in the provision of ADSL used by small businesses and DS1-/DS3-based services must be required before forbearance from unbundling for DS0 loops used to provide xDSL, DS1, or DS3 loops is granted. Thus, the FCC must determine that both the 50-percent market share test and the 75-percent network coverage threshold are satisfied in the business market before it can grant forbearance from UNEs needed to serve business customers.

Respectfully submitted,



Thomas Jones

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⁶ *Id.* ¶ 67.

⁷ *Id.* & n.177.